IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8915 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAVJIBHAI TAPUBHAI GOTI

Appearance:

1. Special Civil Application No. 8915 of 2003

MR ASHISH M DAGLI for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 10/05/2005

C.A.V. JUDGEMENT

By filing this petition under Article 226 of the Constitution of India, the petitioner G.S.R.T.C. has challenged the judgement and Award dtd.27/11/2002 passed by the learned Labour Court, Rajkot in Reference (LCR)

No.223 of 1999, whereby the Labour Court quashed the order passed by the petitioner Corporation terminating the service of the respondent workman, and as the respondent reached at the age of superannuation, there is no question of reinstatement, but he should be paid 25% back wages till the date of award and all consequential retiral benefits within 30 days from the date of publication of the award.

2. Short facts of the case of the petitioner are such that the respondent was working as a Conductor in the petitioner Corporation since long. On 28/3/1986, when the respondent was on duty on the bus enrouted from Surat to Atkot, the bus was checked by the checking squat of the respondent and it was found that five and half passengers travelling from Nadiad to Village Radhu group from one group from whom the petitioner has collected fare and did not issue tickets up to the checking place and it was also found that three passengers of one group who were travelling from Nadiad to Dholka to whom the respondent workman neither issued tickets nor collected fare. In pursuance of the said allegations, the petitioner served a chargesheet to the respondent and thereafter inquiry was held against the respondent and thereafter, a show cause notice was issued by the petitioner to the respondent and subsequently, the service of the respondent was terminated on 8/8/1995. Thereafter, the respondent approached the Civil Court by way of filing Civil Suit No.1075 of 1995 and obtained injunction. Against the said order of injunction, the petitioner Corporation approached the District Court by filing Civil Misc.Appeal No.225 of 1986, but thereafter, the respondent withdrawn the said civil suit on 30/6/1998 subject to approach the Labour Court. Thereafter, the respondent approached the Labour Court, Rajkot by filing Reference No.223 of 1999 and during the pendency of the reference, the respondent has superannuated. Thereafter the Labour Court passed the impugned award quashing and setting aside the termination order passed by the petitioner Corporation against the respondent and as the respondent has superannuated, the Labour Court directed the petitioner to pay 25% back wages of interim period and all the consequential retirement dues within 30 days from the date of publication of the Award, against which the present petition has been filed by the petitioner Corporation.

3. Learned counsel for the petitioner has mainly argued that the labour court has committed serious error of law in exercising powers u/s.11(A) of the Industrial Disputes Act, as apparently the misconduct committed by

the respondent was serious and same was proved during the departmental inquiry and legality and validity of the departmental inquiry was not challenged before the labour court. He has also argued that the labour court has committed serious error of law in holding that since the passengers are not examined during the departmental inquiry, the charges are not proved; that the labour court erred in holding that it does not appear whether chance of cross examination of reporter is given to the respondent, in fact, the respondent has cross-examined the reporter; that the labour court has erred in granting back wages, as there is no evidence to this effect on the record. Consequently he has prayed to quash and set aside the award.

4. On the other hand, Mr.Mukesh Rathod, learned counsel for the respondent workman has opposed this petition inter-alia contending that this petition has been filed under Article 226 of the Constitution of India and under the said Article, the scope of this Hon'ble Court is limited and this Court cannot re-appreciate the evidence on record and cannot interfere with with finding of fact arrived at by the Labour Court, more particularly when no error is committed by the Labour Court. He has further argued that the Labour Court has passed the award considering all the aspects of the matter and evidence on record and while passing the award no error is committed by the Labour Court; that the respondent was working as Conductor since last 18 years and his service record was unblemished; that there was no intention of the respondent of to commit any misappropriation; that the inquiry officer did not consider the defence raised by the respondent; that the respondent was doing road booking and the procedure of booking was not closed and therefore, the charge of misappropriation has not been proved in view of decision of this Court in the case of GSRTC vs. JG Rathod, reported in 2004 (3) GCD 2037 (Gujarat); that the Labour Court has considered the defence of the respondent along with his deposition; that the Labour Court has held that the inquiry officer has not considered the defence of the respondent; that the passengers whose statements were recorded, were not examined and only on the basis of the report submitted by the reporter, the charge against the respondent was tried to be proved and he was dismissed from service, which is illegal as per the decision of this Hon'ble Court in the case of Union of India Vs. Hasmukh Raijada, reported in (2004) 5 GHJ 672. He has further argued that the respondent was superannuated in the year 2001 but till date he did not receive his retirement dues from the petitioner because of the pendency of the petition before

this Court and in view of decision of the Apex Court in the case of 2001 AIR SCW 593, when the workman has retired during the pendency of the proceedings, he is entitled for retirement benefits. Consequently, he prayed to dismiss the petition. Mr.Rathod has also placed reliance on the following decisions;

[1] 2000 (4) GLR 3090
[2] 2003 (96) FLR 60
[3] 2002 (93) FLR 426
[4] 1999 SCC (L&S) 898
[5] 2001 SCC (L&S) 283
[6] 2001 (88) FLR 1011
[7] 1984 GLH 525
[8] [2004] 5 GLH 403
[9] AIR 2004 SC 3892

5. Having heard the learned counsel for the respective parties and considering the evidence on record, it is clear that the Labour Court has considered all the aspect of the matter and the evidence on record, while passing the award, and has come to the conclusion that the charges levelled against the respondent are not proved and in view of the misconduct of the respondent, the punishment is too harsh.

6. In my opinion, the judgement and award passed by the Labour Court is just, legal, proper and is in consonance with the evidence on record and while passing the award no error is committed by the Labour Court and therefore, this court is not inclined to interfere with the reasoned judgement and award of the Labour Court.

7. Over and above, the scope of this Court under Article 226 of the Constitution of India is limited as per the settled law and hence this court cannot re-appreciate the evidence, when there is no apparent error of law.

8. In the facts and circumstances of the case and considering the relevant case laws, this petition is required to be dismissed and the same is accordingly dismissed. The petitioner is directed to comply with the award and pay back wages and all consequential retiral benefits to the respondent, who is retired on account of reaching at the age of superannuation during the pendency of the reference, as per the award forthwith. Rule is discharged. Interim relief stands vacated. No order as to costs.

(SHARAD D.DAVE,J.)
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